

SENATE BILL 2402

By Overbey

AN ACT to amend Tennessee Code Annotated, Title 56,
relative to captive insurance companies.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 56, Chapter 13, Part 1, is amended by adding the following as a new, appropriately designated section:

(a) Notwithstanding any other method authorized by law, a foreign or alien insurer may become a domestic captive insurance company by complying with the requirements of this chapter relative to the organization and licensing of a domestic captive insurance company of the same type with the approval of the commissioner. A captive insurance company redomesticating to this state pursuant to this section may be organized under any lawful corporate form permitted by this chapter.

(b) A redomestication pursuant to this section shall be authorized for insurance companies domiciled in foreign or alien jurisdictions that authorize the redomestication of insurance companies where, as a result of the actions taken by the company pursuant to this section to redomesticate to this state, shall no longer be a domestic legal entity of a foreign or alien jurisdiction. A company wishing to redomesticate under this section must also provide evidence that the applicable regulatory authority of its domicile consents to the redomestication.

(c) An insurance company requesting to redomesticate under this section shall file with the secretary of state its articles of association, charter, or other organizational document, together with appropriate amendments thereto which are adopted in accordance with the laws of this state, and bring such articles of association, charter, or other organizational document into compliance with the laws of this state, along with an

approval letter issued by the commissioner. The company may file with the secretary of state an election deferring the effective date of the redomestication. Upon filing and paying the required fees prescribed in title 48 and title 61, the secretary of state shall issue an acknowledgement letter to the applicant. The secretary of state is also authorized to promulgate rules that provide for a fee to cover the cost of a redomestication. Such rules shall be promulgated in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

(d) The company shall file a copy of the secretary of state's acknowledgement letter with the commissioner, who shall then issue a license pursuant to § 56-13-103.

(e) Upon the completion of a redomestication under this section, the captive insurance company shall be subject to the laws of this state and shall be considered domiciled in this state. The captive insurance company shall be deemed to have a formation date corresponding to its original formation date in the foreign or alien domicile.

(f) For the purposes of § 56-13-109, any examination conducted by the foreign or alien domicile that is substantially similar to an examination that would have been done in this state had the company been domiciled in this state shall be recognized for the purposes of establishing the period of time when the next examination is due.

(g)

(1) A company redomesticating under this section shall only be liable for taxes due pursuant to § 56-13-114 on premiums paid to the company after redomestication.

(2) A company redomesticating under this section after July 1 of a year shall only be subject to one-half (1/2) of the minimum premium tax specified in § 56-13-114(c) in its first year after redomestication.

(3) An alien company redomesticating under this section shall report all premium taxes due under § 56-13-114 but may, in either its first or its second year of operations, but not both, after redomesticating to this state, elect to

forego the payment of premium taxes. However, a company making such an election that surrenders its license or redomesticates to another jurisdiction within five (5) years of redomestication into this state shall immediately pay a tax in an amount equal to the foregone premium tax plus ten percent (10%) per annum from the date the foregone premium tax would have been due under § 56-13-114.

(h) This section shall not be the exclusive means of redomesticating an insurance company to this state and shall not restrict the ability of an insurance company to undergo a merger, consolidation, or transfer of assets and liabilities, or utilize any other means permitted by law to effect the transfer of operations of a foreign or alien insurance company to this state.

SECTION 2. Tennessee Code Annotated, Title 56, Chapter 13, Part 2, is amended by adding the following as a new, appropriately designated section:

(a) The pleadings in any legal action brought by or against a protected cell captive insurance company shall specify the protected cell or cells are or should be named a party to the suit. If the general account is party to such suit, it likewise shall be separately identified in the pleadings as if it were a protected cell.

(b) A legal action brought against a protected cell captive insurance company that does not specify one (1) or more protected cells shall be deemed to have been brought against the general account only.

(c) Any protected cell that is not named in the pleadings of the legal action shall not be deemed to be a party to the legal action. Any protected cell that is erroneously named as a party or named without proper cause shall be entitled to prompt dismissal from the legal action.

(d) Unless specified by the plan of operation, participant contract, or other prior contractual agreement, the assets of one (1) protected cell shall not be encumbered or seized to satisfy the obligations of or a judgment against any other protected cell. No protected cell has a duty to defend the rights and obligations of any other protected cell.

(e) In any legal action involving a protected cell captive insurance company or a protected cell, any papers, documents, or property of a non-party protected cell shall be afforded the same status during discovery as the documents or property of any other unrelated third party. A nonparty protected cell shall have standing to appear and petition for any appropriate relief to protect the confidentiality of its papers or documents.

SECTION 3. Tennessee Code Annotated, Section 56-13-114, is amended by adding the following sentence at the end of subsection (d):

For the purposes of calculating the ad valorem taxes, each captive insurance company licensed pursuant to this chapter and each protected cell of a captive insurance company licensed pursuant to this chapter, that insures only the risks of the captive insurance company's or protected cell's owners, affiliated companies or controlled unaffiliated business, shall be treated as a pure captive insurance company.

SECTION 4. Tennessee Code Annotated, Section 56-13-114, is further amended by adding the following subsection:

(i) Citizens of this state, including industrial insureds as defined in § 56-2-105(7), who own a captive insurance company and, on or before December 31, 2018, redomesticate that captive insurance company to this state pursuant to this chapter shall not be liable for any unreported taxes due pursuant to § 56-2-411 on a policy or contract of insurance procured from the captive insurance company before the redomestication of the captive insurance company to this state, provided the policy or contract is

substantially similar to a policy or contract of insurance procured from the captive insurance company after it is redomiciled to this state.

SECTION 5. This act shall become effective upon becoming law, the public welfare requiring it.